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ORIGINAL

CASE NO. 87-5170

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

JOHN C. McCULLOCH, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

On Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Eleventh Circuit

REPLY BRIEF OF PETITIONER

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QUESTION FOR REVIEW

WHETHER CONVICTIONS FOR PARTICIPATION IN A RACKETEER INFLUENCED AND CORRUPT ORGANIZATION (RICO), AND RICO CONSPIRACY, MAY STAND IN LIGHT OF SUBSEQUENT VACATION OF CONVICTIONS OF THE PREDICATE ACT CRIMES UPON WHICH THE TWO RICO CONVICTIONS MAY HAVE BEEN BASED, AND WHERE THERE WAS NO SPECIAL JURY VERDICT INDICATING UPON WHICH PREDICATE ACTS THE JURY RELIED IN FINDING GUILT ON THE RICO AND RICO CONSPIRACY CHARGES.

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PETITIONER'S REPLY TO ARGUMENTS FIRST
RAISED IN GOVERNMENT'S BRIEF

The Government's Brief in Opposition first raises the issue of whether a conflict actually exists between the ruling of the Eleventh Circuit herein, and the ruling of the Ninth Circuit in United States v. Brown, 583 F. 2d 659 (3d Cir. 1978), Cert. Den. 440 U.S. 909 (1979), because this appeal is from a collateral attack on convictions, while Brown involved a direct appeal.

Of course, the District Court opinion herein expressly recognized the conflict between its ruling and that in Brown. Cooper v. United States, 639 F. Supp. 176, 181 (M.D. Fla. 1986). It was that District Court opinion which the Eleventh Circuit specifically adopted as its own in this cause. The Government now asserts, though, that relief under a 28 USC §2255 Motion should only be granted where the convictions were "fundamentally defective." It asserts that such is not the case on a direct appeal.

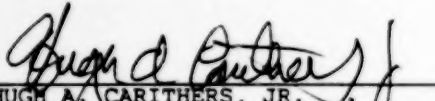
The Government ignores the District Court's own opinion herein in this regard, though. There, it was reasoned that a "complete miscarriage of justice" would occur if collateral relief were not granted to the Petitioner. Id., at 179. In fact, relief was granted as to six of his convictions. The only issue was whether that relief would, in turn, require the vacation of further convictions. The Courts below concede that it would in the Third Circuit, though it does not in the Eleventh Circuit. Thus, there lies at the heart of this case the classic conflict which should give rise to a Writ of Certiorari. If it is not a "fundamentally defective" application of justice to allow convictions to stand in one part of this country and not in another part under the same facts, we must be living in a world only Franz Kafka could appreciate.

CONCLUSION

The Petition for a Writ of Certiorari should be granted herein because of an express, direct conflict between two Circuit Courts on a significant question of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof have been furnished to:
Honorable Charles Fried, Solicitor General, William F. Weld,
Assistant Attorney General, and Kathleen A. Felton, Attorney,
Department of Justice, Washington, D.C. 20530; and Eugene Loftin,
Esquire, 220 East Forsyth Street, Jacksonville, Florida 32202, by
mail, this 22nd day of October, 1987.


Attorney

(LBS#51-MCCUL1-2)